

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

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Joint Application of )  
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**AMERICA WEST AIRLINES, INC. and  
MESA AIRLINES, INC.** )

Docket OST 2003-16444

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for exemptions pursuant to 49 U.S.C. 40109 )  
(Phoenix, Arizona (PHX)-Los Cabos (SJD) and )  
Puerto Vallarta (PVR)) )  
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**ANSWER OF ALASKA AIRLINES, INC.**

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DATED: November 14, 2003

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**ANSWER OF ALASKA AIRLINES, INC.**

Alaska Airlines, Inc. ("Alaska") hereby answers the joint application of America West Airlines, Inc. ("America West") and Mesa Airlines, Inc. ("Mesa") (together, the "Applicants") requesting exemptions pursuant to 49 U.S.C. 40109 that would permit America West and Mesa to begin wet lease and codeshare operations between Phoenix and the Mexican points Los Cabos and Puerto Vallarta.<sup>1</sup> Under the scenario proposed by the Applicants, the United States would be required to withdraw Alaska's designations for these markets and reassign them to Mesa, precluding Alaska from ever resuming Phoenix-Los Cabos/Puerto Vallarta service and providing America West with a *de facto* and *de jure* U.S. carrier monopoly in the Phoenix-Los Cabos/Puerto Vallarta markets. No other U.S. carrier could enter these markets given current bilateral restrictions. Before

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<sup>1</sup> America West does not explain why it, in addition to Mesa, requires an additional exemption to serve routes it is already authorized to serve or how an exemption granted to it would permit it to display its code on Mesa's flights.

taking this drastic step, Alaska would ask that the Department favorably consider any one of several less anticompetitive alternatives.

Alaska has operated seasonal services between Phoenix and Puerto Vallarta/Los Cabos for several years, and these are the only Phoenix-Mexico routes Alaska serves. Alaska's modest results in these markets during the 2002-2003 winter season combined with traffic projections for the current winter season suggested to Alaska that passenger demand during the 2003-2004 winter season would not justify the commitment of resources necessary to operate this service when compared with other market opportunities. Alaska therefore decided to suspend 2003-2004 winter season service in these markets, but fully intended to evaluate next year prospects for the 2004-2005 winter season along with Alaska's seasonal evaluation of a number of other markets. Alaska has a major presence in the West Coast-Mexico markets and considers its U.S.-Mexico markets to be core components of its route system.

Alaska is certainly not alone in experiencing lower demand on certain routes, as evidenced by the Department's decision in Order 2003-4-18 to grant to all U.S. passengers carriers, including America West for that matter, a blanket waiver of any dormancy conditions contained in their operating authorities. Under the Department's order, carriers are not required to advise the Department of their scheduling plans until February 15, 2004, in recognition of the fact that carriers are still gathering and analyzing data and information needed to reach decisions on particular markets. Alaska, like other carriers, is in the process of reviewing a number of service options for next winter. Alaska can now state, however, that it does not plan to resume Phoenix-Puerto

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The only carrier requiring operating authority from the Department in this case is Mesa, which needs an exemption, and grant of that exemption would then leave Mesa free to agree to display America West's code on its flights.

Vallarta/Los Cabos service on April 1, since these leisure markets are seasonal in nature with greater traffic volumes during the winter season.

Notwithstanding Alaska's decision not to offer off-peak season service in the two Phoenix-Mexico markets, Alaska urges the Department to consider alternatives that would not result in conferring a protected monopoly in these two markets and, at the same time, not unfairly disadvantage Alaska by withdrawal of its designations prior to the industry-wide reply dates established by Order 2003-4-18.

First and foremost, it is not at all clear that Mesa even requires a designation to operate the proposed services. The Applicants have not proposed a codeshare or blocked-space arrangement under which Mesa would operate its aircraft and display *both* Mesa's and America West's codes. Alaska would agree that under such a scenario, Mesa, as an operating and marketing carrier, would require a designation under the U.S.-Mexico bilateral. The service proposed by the Applicants is far different, however.<sup>2</sup>

Under the Applicants' proposal, Mesa will operate the functional equivalent of a wet lease to America West. According to the application, the Mesa-crewed aircraft will display only the HP\* code and will operate only as America West Express. Mesa will not hold out or sell any services in its name in either market. There is virtually no difference between this arrangement and a wet lease, no matter how the parties to the arrangement choose to characterize it.<sup>3</sup> In fact, the Department has

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<sup>2</sup> Alaska recognizes and agrees that, as a licensing matter, both carriers would require underlying economic authority from the Department whether the proposed services are operated as a wet lease or as a true codeshare. However, requiring that the carriers hold economic authority is significantly different from requiring that both hold bilateral designations where only one of them will be holding out service.

<sup>3</sup> The fact that the Applicants have not identified their arrangement as a wet lease should have no bearing on whether a designation is required under the bilateral. Sound policy considerations militate strongly against allowing parties to influence whether a designation must be used simply by their choice of description. Surely, if one Mexican carrier were to wet lease aircraft to another Mexican carrier for scheduled service between Mexico and the United States the Department would *not* require the Mexican wet lessor to hold a designation under the bilateral—only the wet lessee, as the marketing carrier, would require one of the two available city pair designations. The same

long recognized that the very type of arrangement between America West and Mesa is a wet lease, irrespective of the fact that the parties to the arrangement have opted to identify it as a codeshare:

The term “code-sharing” also refers to other arrangements where the code on a passenger’s ticket is not that of the operator of the flight, but where the operator does not also hold out the service in its own name. Such code-sharing arrangements are common between commuter air carriers and their larger affiliates. *Arrangements falling into this category are similar to leases of aircraft and crew (wet leases).*

The Department regulates all international code-sharing arrangements as wet leases under 14 C.F.R. Parts 207, 208, 212 and 218.<sup>4</sup>

There is no bilateral or policy justification for using a valuable designation only to permit one carrier to wet lease aircraft to another, especially where that designation must be withdrawn from another U.S. carrier and will result in an effective monopoly in two U.S.-Mexico markets. The potential competitive harm in this case is magnified because allocation of Alaska’s designation to Mesa will prevent any U.S. carrier from becoming a new entrant in the affected markets. Grant of the application would provide America West with nearly unfettered discretion to allow or not allow additional competition on these two routes and dictate the terms under which such competition would be permitted—a result that is plainly not consistent with the public interest. Before taking any action on the Applicants’ request, Alaska urges the Department to discuss fully

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reasoning should apply with equal force to the arrangement proposed by Mesa and America West. Not to do so would squarely disadvantage U.S. carriers by requiring the use of a designation while not requiring the same result in the case of two Mexican carriers. Alaska understands the Department’s prior practice may have been to use a designation in cases such as this, and is aware of at least two instances—neither involving the proposed ouster of an incumbent carrier—where Mesa has been designated to operate as a wet lessor to America West for services to Mexico. Nonetheless, the unusual circumstances surrounding these particular routes and the competitive harm that may potentially result from reassignment of Alaska’s designations justify reconsideration of this practice.

<sup>4</sup> *Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases*, 59 F.R. 40836, August 10, 1994 (emphasis added).

with the Government of Mexico whether the practice of requiring the use of a designation under these circumstances should be revised.<sup>5</sup>

Second, even if the Department determines after consultations with Mexico that the Mesa/America West wet lease must be treated as a codeshare for bilateral purposes and that Mesa will therefore require a designation, the Department could provide Mesa with designations by temporarily withdrawing America West's Phoenix-Puerto Vallarta and Phoenix-Los Cabos designations and reassigning them to Mesa. According to the Department's October 29, 2002, renewal of America West's authority to serve these markets, America West's services between these cities are only operated seasonally. Since the application indicates that Mesa will not begin flights until at least April 1, 2004, America West's designations could be reassigned easily to Mesa (and America West issued the necessary codeshare authorizations,<sup>6</sup> thus permitting it to display the HP\* code on Mesa's flights) without foreclosing Alaska's ability to resume competitive services during the 2004-2005 winter season. If America West wishes to resume service during the 2004-2005 winter season with aircraft larger than Mesa's 86-seat CRJ-900, it could do so by requesting return of Mesa's designations. If not, Mesa could retain the designations and continue to operate as America West Express. This would provide America West with precisely the type of operating

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<sup>5</sup> Alaska notes also that Mesa recently filed an exemption application requesting authority and a designation to "codeshare" with America West on the Phoenix-Mazatlan route. According to the *Official Airline Guide*, America West also serves this route with its own aircraft and presumably holds one of the two bilateral designations. Mesa states approval of its application will "bring additional U.S. carrier competition to the U.S.-Mexico market", but does not explain whether it intends to hold out service in its name or only as America West Express (the proposed flight schedule attached to the application as Exhibit C identifies the flights as America West flights only). Nor is it credible to suggest, as Mesa does, that offering Phoenix-Mazatlan passengers the choice of flying America West Express in addition to America West constitutes a "significant competitive travel alternative". If Mesa intends to operate only as America West Express, its entry into this market and assignment of the only remaining designation to Mesa will not only do nothing to increase competition, it will prevent another U.S. carrier from obtaining the designation it would need to compete directly with America West, just as approval of the application in this docket would effectively prevent competition in the Phoenix-Puerto Vallarta and Phoenix-Los Cabos markets.

<sup>6</sup> Carriers providing codeshare-only service in the U.S.-Mexico markets do not require designations. Under procedures established several years ago, the U.S. is only required to issue a notification to the Government of Mexico for codesharing operations.

flexibility to which it referred in its application, allowing it to hold out service in both markets on a year round basis with Mesa's smaller aircraft in the off peak season and its own larger aircraft during the peak season.<sup>7</sup>

Third, in the event the Mexican Government refuses to permit Mesa to operate without a designation and America West can demonstrate that it has in the past and will continue to operate year round service in both markets, the Department could reassign Alaska's designations to Mesa for a temporary period through October 31, 2004. This would permit Mesa to begin service on April 1, 2004, while preserving for Alaska the scheduling and planning flexibility granted to all U.S. carriers under Order 2003-4-18. Alaska is fully prepared to advise the Department *by April 30, 2004*, whether it will resume seasonal operations for the 2004-2005 winter season.<sup>8</sup> Not only would this provide Mesa with designations, it would also preserve for at least some period the possibility that competitive service could be reintroduced into these two markets.

Any one of these three options would enable Mesa to begin service on April 1, 2004, without creating an immediate threat to competition or unfairly limiting Alaska's service options. And, even if the Department is not inclined to pursue any of the options outlined above, the Department should not unilaterally reassign Alaska's designations on a permanent basis prior to the dates specified in Order 2003-4-18. Alaska should, like every other U.S. carrier, retain the right

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<sup>7</sup> America West and Mesa stated that they plan to increase frequencies in the summer season using Mesa's regional jet aircraft, and thus offer a more constant frequency level year round. This result could be achieved by America West and Mesa sharing a single designation for each market, thus avoiding the harm to competition that would result from assignment of both designations to a single marketing carrier. Although this option would limit the operating carrier to either Mesa or America West rather than allow both to operate simultaneously, the competitive benefits that would flow from preserving the availability of the second designation would far outweigh any such limitation. It also would not adversely affect Mesa economically, since as a wet lessor its investment in developing the two markets will be negligible.

<sup>8</sup> Order 2003-4-18 states specifically that the Department will consider requests for extension of the waiver of the dormancy period beyond March 31, 2004. Under Alaska's proposal, no extension of the waiver would be required. Rather, Alaska would receive only an additional forty-five days to consider whether it could mount competitive

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granted in Order 2003-4-18 to fully evaluate its service plans over the next several months before being required to make a decision on relinquishing routes in which it has invested significant resources and time.

Respectfully submitted,

A handwritten signature in black ink, reading "Marshall S. Sinick". The signature is written in a cursive style with a large, stylized 'M' and 'S'.

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DATED: November 14, 2003

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service in 2004-2005, while not preventing Mesa and America West from beginning their wet lease services on April 1.



**CERTIFICATE OF SERVICE**

I hereby certify that one copy of the foregoing Answer has this day been served on each of the following individuals via telecopier or email.

  
Marshall S. Sinick

DATED: November 14, 2003

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